

IN THE HIGH COURT OF GUJARAT
AT AHMEDABAD

Date of decision: 08th December 1995

SPECIAL CIVIL APPLICATION NO.3951 OF 1991

THE HONOURABLE MR. JUSTICE B.C.PATEL

AND

THE HONOURABLE MS. JUSTICE R.M.DOSHIT

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involved a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. M.C.Bhatt, Advocate, for the Petitioners.

Mr.Amit M.Panchal, Assistant Government Pleader, for the Respondents.

Coram: B.C.Patel & R.M.Doshit, JJ.
(08th December 1995)

Oral Judgment: (Per B.C.Patel, J.)

The petitioners who are agriculturists and holding agricultural fields in the sim of village Padanole of District Baroda, have challenged the notification published by the State Government under section 4 of the Land Acquisition Act (hereinafter referred to as the Act) and the notice issued under section 9 of the Act. The notification under section 4 is published on 6.3.1990. As the lands of the petitioners were sought to be acquired, they submitted their objections vide Annexure-C. It is not known to the petitioners as to when notification under section 6 was published but as the notice under section 9 came to be served on the petitioners, they came to know that their lands are to be acquired. In the reply they have pointed out that a promise was given to afford a personal hearing and without giving a personal hearing orders are passed.

2. Mr. Bhatt, learned Advocate for the petitioners, contended that notification under section 4 and notice under section 9 are required to be quashed and set aside. He submitted that he is not aware about notification under section 6 which has been published by the State Government and the same should be quashed and set aside. Taking into consideration the fact that without giving hearing, the proceedings are completed till the stage of section 9, that public purpose which is indicated is not a real public purpose and there is nothing to indicate as to who is going to finance the same and there is no details about the Transportnagar, Mr.Bhatt requested to quash the proceedings.

3. The learned Advocate for the petitioners, while making submissions for affording an opportunity of hearing, drew our attention to paragraphs 18 and 19 of the petition which are as under:

" 18. The petitioners submit that the petitioners are not afforded any reasonable opportunity by the authority to represent their case against the proposed acquisition. The petitioners submit that the petitioners are not afforded reasonable opportunity to represent their case and they have not been given personal hearing as contemplated by the provisions of the Land Acquisition Act."

" 19. The petitioners submit that the impugned

acquisition is in clear violation of the mandatory provision of law as no personal hearing is given under sec. 5-A of the Land Acquisition Act."

4. He also drew our attention to paragraph 18 of the affidavit-in-reply filed by the Special Land Acquisition Officer, Vadodara, which reads as under:

" 18. With reference to the contents of para 18, it is denied that the petitioners are not afforded any reasonable opportunity of hearing. I say that all the opportunities were given to the petitioners to file their objections and after considering the said objections in detail the acquisition proceedings have proceeded further."

5. It is clear from the contentions raised that, as per say of the petitioners, no hearing was given to them and, while dealing with the contentions in the affidavit-in-reply, there is no specific denial in that regard. On behalf of the State, it has not been specifically stated that an opportunity of hearing was given or before this Court no material is placed indicating that either the petitioners were heard or an opportunity of hearing was given and they have not availed of the same. The deponent on behalf of the State has stated that opportunities were given to the petitioners to file their objections and after considering the said objections in detail the acquisition proceedings have proceeded further. While saying so, the deponent has not stated that the petitioners were given an opportunity of hearing. The Apex Court in case of FARID AHMED ABDUL SAMAD v. AHMEDABAD MUNICIPAL CORPORATION reported in AIR 1976 Supreme Court at page 2095 has observed that, the heart of section 5-A of the Land Acquisition Act is the hearing of objections and under sub-section (2) of that section, a personal hearing is mandatorily provided for. Section 5-A does not rest on a person's demand for personal hearing. The matter may be different if a person whose property is acquired abandons the right to a personal hearing. Provision of appeal is also not a substitute for personal hearing provided for under section 5-A of the Land Acquisition Act.

6. In view of the clear language of section 5-A of the Act, the authorities have not acted according to law. Hence, we are inclined to allow this Special Civil Application with costs. Under the circumstances, it is

clear that, as contemplated under section 5-A of the Act, the proceedings are not valid and therefore the proceedings commenced after lodging the objections under section 5-A are hereby quashed and set aside. As a result thereof, the notice issued under section 9 of the Act also stands quashed and set aside. Rule is accordingly made absolute with costs. The ad-interim relief stands vacated.

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